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COMMITTEE AGAINST TORTURE

Seventeenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 278th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 21 November 1996, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.278/Add.1.

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The meeting was called to order at 10.35 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

1. Mr. BURNS suggested discontinuing the informal discussions which the Committee had been holding prior to the consideration of country reports.

2. The CHAIRMAN said he took it that that was the wish of the other members of the Committee.

3. It was so agreed.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Georgia (CAT/C/28/Add.1)

4. At the invitation of the Chairman, Mr. Kavsadze, Mr. Korkelia and Mrs. Kavsadze (Georgia) took places at the Committee table.

5. Mr. KAVSADZE (Georgia) thanked the Committee for the opportunity to provide additional information on how Georgia was complying with the provisions of the Convention.

6. Beginning with a brief review of the recent history of his country, he said that after the Soviet Union had collapsed and Georgia had recovered its independence, the country had been racked by bloody ethnic conflicts, economic and political crises and crime. Civil war had been imminent. Nevertheless, the Georgian authorities had chosen the path of democracy and human rights.

7. As early as April 1992, although the political confrontation had worsened and the country had been on the brink of chaos, President Shevardnadze had called into being the Committee for Human Rights and Relations between Peoples. The Committee was chaired by the Deputy Prime Minister, a post which he himself had occupied to date. The purpose of the Committee was to show the citizens of Georgia and the international community that that country had chosen democracy and human rights. The Committee heard complaints of human rights violations lodged by individuals. It had also made important proposals for a national human rights system that was consistent with international standards and law.

8. The initial report of Georgia had been prepared in the Committee with the assistance of law-enforcement, judicial and other State bodies, and also non-governmental organizations (NGOs). Half of the complaints received by the Committee had related to torture and cruel treatment and punishment. As Deputy Prime Minister and Chairman of the Committee, he had every year personally received some 1,000 individuals who had wished to lodge complaints. That had compelled his Government to give serious consideration to the issues raised. He himself was particularly sensitive to them, having spent 40 days in prison and experienced degrading treatment as a member of the opposition.

9. On the basis of the information received covering the years 1992 to 1995, it could be concluded that torture and other cruel or degrading treatment or

punishment persisted. In response to that situation, the authorities had taken measures which had led to a sharp reduction in cases of torture during pre-trial detention and in prisons and military facilities. Also new legislation had prohibited the formation of paramilitary units.

10. Aware of the need for effective machinery to combat torture, on 4 October 1994 President Shevardnadze had issued a decree on measures to ensure the realization of human rights in Georgia, which included the introduction of civil control over the prison system. In particular, the Committee had been given the right to make representations to all State bodies and organizations and to receive from them any information desired. An ombudsman's office had also been instituted.

11. Together with officials of administrative bodies and representatives of the Organization for Security and Cooperation in Europe (OSCE), the Red Cross, Amnesty International, Helsinki Watch and other NGOs, he had personally visited a number of prisons, including remand prisons. The Human Rights Centre, OSCE, Helsinki Watch and Norwegian organizations had provided assistance in dealing with the problem of ill-treatment in those establishments. Although Georgia had no special educational programme, seminars had been conducted with the help of Norway, OSCE and the Human Rights Centre for the benefit of persons directly concerned. Furthermore, staff had received special training in the United Kingdom.

12. The Committee for Human Rights and Relations between Peoples was giving serious consideration to the question of the death penalty. Although public opinion was against its abolition, the Committee was working to have the death penalty removed from Georgian legislation, and President Shevardnadze was also in favour of such an initiative. But the Committee's efforts had not yet been successful, notwithstanding the fact that, pursuant to the Constitution, life was an inviolable human right and was protected by law. Pending its complete abolition, the death penalty could be contemplated only for particularly serious crimes against life. Unfortunately, the courts continued to impose capital punishment, and there were currently about 50 persons awaiting execution; he could provide a list of their names. It should be noted, however, that no death sentence had been carried out in Georgia since February 1995. The Pardon Institute had been very active: in 1995 alone 14 persons had been pardoned. There again, he could provide a list of the names of the persons concerned.

13. Georgia had set up machinery for preventing torture to the greatest possible extent. Chapter II of the Constitution was devoted entirely to human rights. It contained provisions punishing acts of torture and other cruel, inhuman or degrading treatment or punishment. Moreover, it stipulated that no one could be arrested without trial, and it set a limit of nine months on pre-trial detention. Another major breakthrough had been that the Prosecutor's Office had been placed under judicial control.

14. One new development had been the creation of the institution of the public defender, which was modelled on the Swedish ombudsman, but had broader powers. When Georgia had prepared the initial report, there had not yet been any legislation on the public defender; since then Parliament had adopted an

organization act relating to that institution. The Human Rights Centre, OSCE and a number of international experts had provided assistance in drafting that act, which had drawn upon equivalent legislation in Spain, Poland and the Russian Federation.

15. In another development, the new Constitutional Court had begun work. That would help improve the overall situation, because citizens could now appeal either to the public defender or to that Court in connection with human rights violations. Every citizen could lodge a complaint with the Court to challenge the constitutionality of a particular legal provision.

16. The initial report had given considerable attention to the serious human rights violations, including torture, being committed in Abkhazia. The central authorities had lost all control over the situation there, and his Government had requested the United Nations Commission on Human Rights or other human rights bodies to investigate. Some 300,000 persons had fled. He had recently received a letter dated 18 November 1996 from the Chairman of the Supreme Soviet of the Abkhaz Autonomous Republic saying that ethnic cleansing and genocide were being committed against the Georgian population by Abkhazian separatists, who had been employing torture on a massive scale against the peaceful population, and that the Georgian Prosecutor's Office had been unable to institute criminal proceedings because the territory of the Abkhaz Autonomous Republic was under the control of the separatist fascist regime. The letter had called for the creation of an international tribunal to weigh the evidence of continuing genocide and ethnic cleansing being committed by Abkhazian separatists and to punish the guilty parties.

17. Mr. BURNS (Country Rapporteur) noted that Georgia had not declared in favour of articles 21 and 22 of the Convention but had not entered reservations in respect of articles 20 and 30.

18. In the absence of a core document, the Committee needed more information concerning institutions. What were the procedures for appointing and removing judges? Did courts have an inherent jurisdiction to hear claims of unlawful detention at any point in the investigative process? How was the Legislature composed and what was its relationship to the Executive?

19. Was there a possibility of judicial appeal beyond the court that pronounced the death penalty? Was the "Pardon Institute" referred to in the delegation's presentation a special committee responsible for considering pardons and, if so, by whom was it established?

20. He understood that the combined effect of the new Constitution, the Criminal Code and Code of Criminal Procedure was to prohibit torture and cruel and inhuman treatment and punishment. How many complaints of torture were made annually? How many were substantiated? How many prosecutions resulted and what was their outcome?

21. Could the delegation confirm that the combined effect of decision No. 562 of the Georgian Parliament and article 6 of the Constitution was to incorporate the Convention into domestic law?

22. What stage had been reached in the enactment of the draft presidential decree on urgent measures for the halting of torture and other cruel, inhuman or degrading treatment in places of detention (CAT/C/28/Add.1, para. 13)?

23. Who appointed the Committee for Human Rights and Relations between Peoples (para. 18)? How many members served on the Committee? How long was their term? And how were they replaced? When the Committee made representations to public officials, were its demands, requests or suggestions mandatory or precatory?

24. The Committee noted with approval that the Prosecutor's Office had been converted into a judicial body (para. 16), provided, of course, that the judiciary was genuinely independent.

25. Would the new office of Public Defender (para. 20) provide defence counsel for persons accused of crimes or would it confine itself to the more policy-driven activities described in the delegation's presentation?

26. Given that the definition of torture required it to be perpetrated by an agent of the State, under what circumstances could torture be considered as an act of a private nature (para. 23)?

27. What stage had been reached in the enactment of the law on compensation and rehabilitation (para. 26) and what were its terms? What was the situation under existing legislation?

28. The Georgian authorities acknowledged (para. 27) that torture continued to occur in places of detention. He trusted that acknowledgement was the first step towards reform.

29. The Committee noted with concern that bureaucrats had devised ways of circumventing the State's law and policy on giving lawyers access to persons held in custody (para. 28). What action was being taken to remedy the situation? It was also regrettable that bureaucrats were in many cases unwilling to apply new legislation or even unaware of its existence (paras. 29 and 30). Perhaps the fact that the Convention had not yet been translated into Georgian was partly responsible for the situation described in paragraph 30.

30. The Committee was pleased to note that the Committee for Human Rights and Relations between Peoples had recommended that the definition of torture in the Criminal Code should be brought into line with the Convention definition. Had action been taken on that recommendation?

31. He was confused by the reference in paragraph 38 (a) to a decision on arrest being taken by a court within 24 hours. Could a person be taken to a police station and detained without being arrested? According to paragraph 38 (c), the maximum period of pre-trial detention was nine months. Was there any provision for judicial review during that period?

32. Did Georgian courts have an inherent legal jurisdiction comparable to the habeas corpus concept at common law? How soon could a suspect be visited by a lawyer, relative or doctor? When taken into custody by a police officer or

after 24 or 48 hours? Was there any period during which the police could hold a person incommunicado? Article 43 of the Code of Criminal Procedure provided for admission of the lawyer from the time when the record of detention was drawn up (para. 42). Did that imply the existence of a 24-hour incommunicado period?

33. The penalty of deprivation of liberty referred to in paragraph 44 seemed relatively lenient. How did it relate to the general level of penalties imposed in Georgia?

34. He asked for more information on Georgia's response through investigation and legal proceedings to charges of torture or the equivalent of torture against public officials. The case referred to in paragraph 50 concerned beatings by a convict. Given the detailed allegations of torture and confessions extracted through torture, he was concerned that public officials might enjoy some form of impunity.

35. Paragraph 52 stated that unlawful forensic examinations were carried out by medical establishments under the control of administrative agencies owing to a lack of financial resources. Did such examinations involve, for example, the improper use of psychiatric conditioning or drugs?

36. Were there any exceptional rules in Georgia regarding the proclamation of a state of emergency and, if so, had they been implemented?

37. Was due obedience a defence to a criminal charge and, if so, how was it reconciled with the obligation under article 2 of the Convention?

38. In the light of article 6 of the Constitution, he was surprised to note that, according to paragraph 81 of the report, article 1 of the Convention had not been incorporated into domestic law.

39. With regard to article 4 of the Convention, could the delegation confirm that anyone guilty of complicity in torture would be liable to prosecution?

40. He also asked for confirmation that the Georgian Ministry of Justice interpreted article 4 of the Convention as creating a universal jurisdiction for Georgia over international customary crimes as well as treaty-based crimes.

41. Was the detention referred to in paragraph 81 of the report detention with a view to investigation and was it equivalent to arrest? What were the "corrective labour establishments" and "special investigative prisons" referred to in paragraph 86? What was the meaning of "a motivated resolution" in paragraph 92 (a)?

42. Judging by the material received from NGOs, it seemed that the obligation to provide a suspect or accused person with the services of a lawyer (para. 93) was rarely complied with. Was the same true of access to relatives and doctors? Could a suspect or accused person insist on being examined by his own doctor rather than by a prison or police doctor?

43. What exactly was a private prosecution (para. 97(b)) and how did it differ from a public prosecution? Were there separate security or military courts in Georgia with different rules of application from those of civilian courts?

44. Amnesty International, in a document dated October 1996 referred to the prosecution in Thilisi of a group of police officers, including a former deputy chief of the Thilisi Police Department responsible for combating drug addiction and drug trafficking, on a charge of torturing suspects by electric shock during a murder investigation. What had the outcome been?

50. In case No. 7,495,927, two members of the exiled Supreme Council and three commanders of the National Guard loyal to the exiled parliament had been charged with high treason and banditry. The trial had allegedly violated international standards, with the court ignoring all requests of the defence. The judge had reportedly exerted psychological pressure against witnesses in

favour of the prosecution. Could the delegation ascertain whether the behaviour of the judge had been as described and shed any further light on the court proceedings?

51. Mr. PIKIS (Alternate Country Rapporteur) agreed with Mr. Burns that the acknowledgement of failure to implement certain provisions of the Convention was a step in the right direction. The obligations incurred by States parties must be given priority in terms of resources and action; they could not be suspended, nor could their discharge be delayed.

52. The 1994 Constitution established a framework for guaranteeing human rights but the organization laws required to give effect to its provisions had not yet been enacted. Measures to prevent torture were no less important than remedial measures. The State party had neglected its obligation under article 11 to establish monitoring bodies to oversee conditions in custody and to provide guidance to the authorities responsible for the management of the system. Violations of the Convention by investigative agencies and prison authorities testified to its neglect.

53. Reports from various sources and the State partys' own admission in paragraphs 30, 40 and 119 of the report had revealed cases of ill-treatment. Moreover, there was widespread ignorance of the Standard Minimum Rules for the Treatment of Prisoners and, consequently, inhumane treatment of detainees by personnel in the law-enforcement agencies and prison system. It was nevertheless encouraging that the Government was preparing a presidential decree to halt torture and other cruel, inhuman or degrading treatment of detainees and to regulate the serving of sentences. The Committee looked forward to its speedy promulgation.

54. The duty of States parties to investigate cases of torture was absolute. It was imposed by article 12 of the Convention, regardless of the source of the complaint, provided that the complaint gave rise to reasonable suspicion of a violation. In that regard, a monitoring body to ensure the prompt and impartial investigation of complaints was essential. It was questionable whether investigative practices in Georgia, in particular, the complaints procedure outlined in paragraph 124, adhered to the principles of impartiality envisaged in the Convention. Similarly, the competence vested in the Committee for Human Rights and Relations between Peoples, mentioned in paragraphs 18 and 26 of the report, raised questions concerning the reporting procedure followed and the manner in which complaints were dealt with. The right of the victim to private investigation was not explicit in paragraph 23 and the Committee would require further information on that subject. It also needed clarification on the authority of the State party to issue warrants for the detention of suspects.

55. Certain provisions of article 3 of the Georgian Code of Criminal Procedure, namely, the time-limit for the prosecution of offenders and the provision on reconciliation between the victim and the accused, appeared to be incompatible with the provisions of article 13 of the Convention. The Committee would like to have additional information on that point, which was reflected in paragraph 156.

56. He highlighted paragraph 18 (c), to which the Country Rapporteur had referred earlier, dealing with the preliminary detention of accused persons for a period of nine months. He also wished to know who was empowered to issue orders on internal exile, the criteria upon which such power was exercised, the conditions of exile and the consequences for the families of exiles.

57. Turning to article 14, he asked whether the Government in Georgia had formulated rules on the constitutional right to compensation, as mentioned in paragraph 183. And in view of the right of a victim to psychological, medical and social rehabilitation, he asked whether any measures on rehabilitation had been adopted.

58. The report acknowledged that torture had been used on several occasions to extract confessions from persons under interrogation. The Committee needed further information pertaining to the law on the subject, standards and criteria applied by the judicial authorities in determining whether a confession was admissible as evidence. It was also of interest to know whether any form of corroboration was required as a prerequisite for admissibility and whether there were procedures applicable in court for the determination of admissibility.

59. He stressed that the provisions of article 16 of the Convention comprehensively defined the obligations on States parties under articles 10 to 13. Article 16 encompassed all forms of ill-treatment falling within the prohibited categories of conduct. The conditions under which persons were held in custody in Georgia were deplorable and had led to over 200 deaths in 1994 and 1995. Paragraph 146 of the report acknowledged the deficiency of the prison system and attributed those deaths to disease and the inability of the prison authorities to provide adequate medical care. Immediate action was required to improve the buildings housing prisons and detention centres, increase living space and food supply, and provide hygienic sanitation and medical care. Had the Georgian authorities made any plans to tackle the inhumane conditions prevailing in prisons?

60. Mr. Yakovlev said he was concerned about the absence of the right to appeal against death sentences. Could the Government furnish information on the status of the law and pertinent issues relating to the right of appeal? That question was all the more relevant in the light of Georgia's accession to the International Covenant on Civil and Political Rights, article 14.5 of which guaranteed the right of appeal to persons sentenced to death. In conclusion, he drew attention to paragraph 29 of the report, in which the State party described the difficulties it had encountered in instilling a sense of respect for human rights in law-enforcement personnel. No effort should be spared in educating and training such personnel, nor should there be any hesitation in prosecuting officials responsible for violations of human rights.

61. Mr. CAMARA requested clarification of the mechanism for custody described in paragraphs 38 to 43 of the report. At what point after a person had been arrested were the police or the competent authority obliged to inform the magistrate? Was procedural or disciplinary punishment imposed for the violation of that time-limit and obligation? He was also interested in knowing

the actual powers of the Committee for Human Rights and Relations between Peoples and the method it used in monitoring compliance by law-enforcement agencies.

62. Ms. ILIOPOULOS-STRANGAS asked what rank the Convention had in the hierarchy of instruments applicable to Georgia. She also requested information on the measures taken to ensure the independence of judges, specifically regarding their appointment and qualifications.

63. A series of allegations of torture had been reported by several sources. She inquired about the case involving six members of the political opposition, and asked whether impartial investigations had been conducted. Were there provisions for the punishment of persons found guilty of extracting confessions through the use of torture?

64. Mr. YAKOVLEV said that Georgia was determined to remain on course in achieving its human rights goals, in spite of its totalitarian past and the difficult task it faced in overcoming economic and social obstacles. However, there were no special circumstances which justified the use of torture. He was therefore interested in the Georgian Government's perception of the independence of the courts and of the role of defence attorneys in providing legal protection for victims of torture without fear of persecution. He was curious to know whether defence attorneys were allowed to participate in the interrogation of suspects.

65. Mr. SORENSEN stressed the paramount importance of education, particularly for Georgia, which was in a transitional stage of development. In connection with paragraph 115 of the report, he encouraged the Government to avail itself of the technical assistance services offered by the United Nations. He fully supported the comments made by Mr. Pikis regarding article 14 of the Convention and the possibility for redress. He hoped the delegation would take into account the importance of dealing with not only the moral and medical rehabilitation of torture victims, but also the monetary requirements for implementing those measures.

66. The CHAIRMAN informed the delegation of the existence of the United Nations Voluntary Fund for Victims of Torture and encouraged the Georgian Government to contribute to the Fund if it had not already done so.

The public part of the meeting rose at 12.20 p.m.